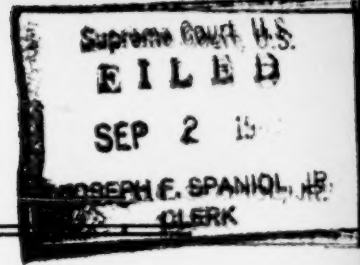


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No. 88-100



**In the
Supreme Court of the United States**

October Term, 1988

Chris Polychron,.....*Petitioner*

v.

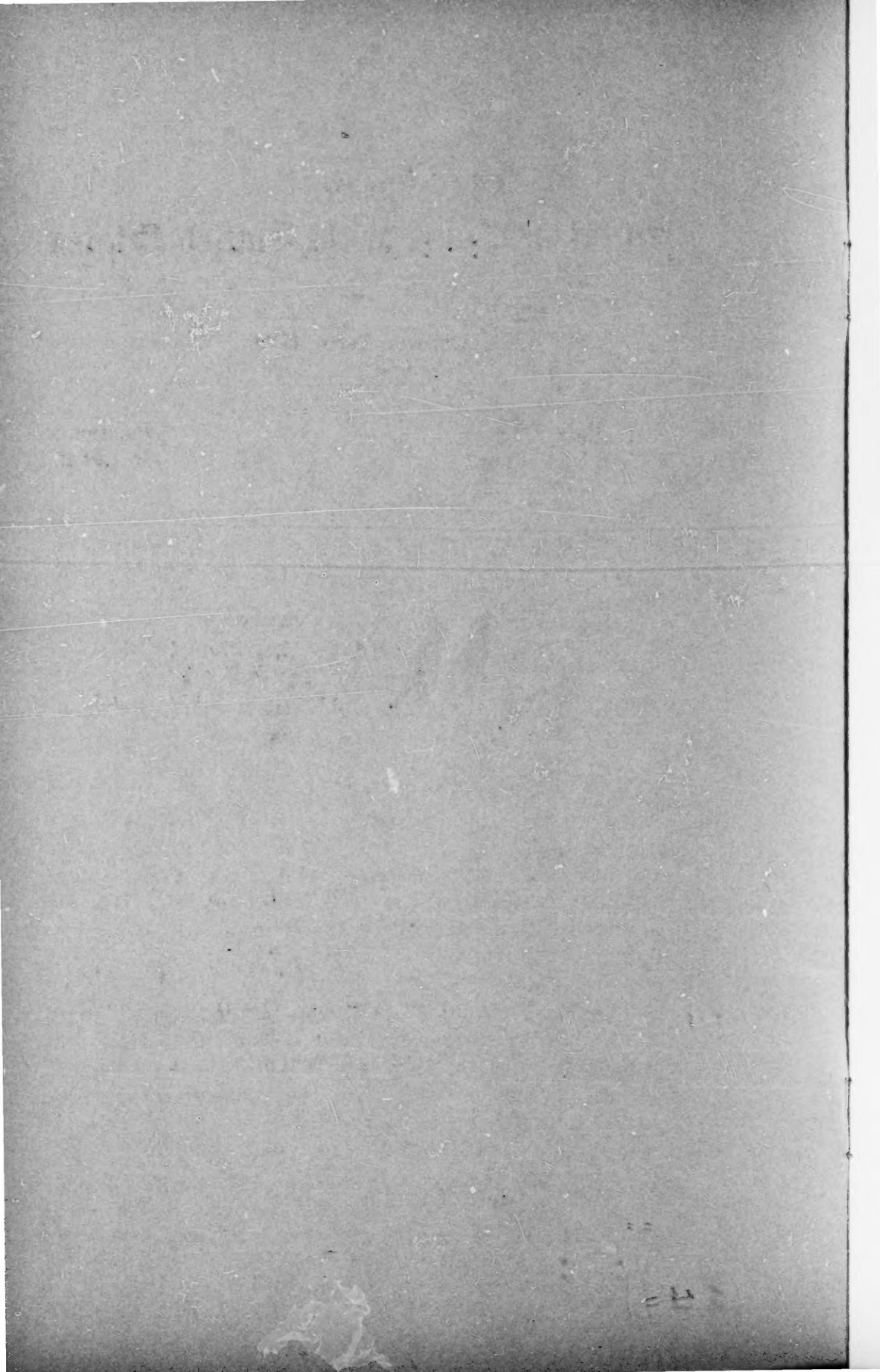
United States of America,.....*Respondent*

**SUPPLEMENTAL BRIEF TO
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

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Dated: August 31, 1988



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United States of America, *Respondent*

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AUTHORITY

Rule 22.6. of the Supreme Court Rules provides that a party may file a supplemental brief at any time while a Petition for a Writ of Certiorari is pending, calling attention to new cases not available at the time of the party's last filing.

The Third Circuit Court of Appeals' decision in *United States v. Mastronardo*, 849 F.2d 799 (3rd Cir. 1988) was decided on June 13, 1988. The Eighth Circuit Court of Appeals' decision in *United States v. Polychron*, was filed by the Eighth Circuit on March 8, 1988.

REASONS FOR GRANTING THE WRIT

Question 1A of the issues presented in Petitioner's request for a Writ of Certiorari is whether individual currency transactions less than the amount required to file currency transaction reports may be aggregated during the relevant time period to support a criminal indictment based upon the failure to file such reports.

There is a split of authority in the Circuits on this question.

Although the case involved the conviction of a customer, the Third Circuit's decision in *Mastronardo*, supra, squarely conflicts with the Eighth Circuit's decision in *Polychron*, and follows similar decisions of the First ¹ Seventh ², Ninth ³, and Eleventh ⁴ Circuits.

Interestingly, the Third Circuit in *Mastronardo* predicted that the Eighth Circuit would overturn a conviction where more than \$10,000.00 was exchanged at a single bank branch and the Government sought to aggregate those separate transactions. 849 F.2d 804.

Finally, the Court in *Mastronardo* pointed out that criminal liability cannot be imposed against persons for

1

United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985).

2

United States v. Gimble, 830 F.2d 621 (7th Cir. 1987). (While the Third Circuit cited the District Court Opinion in *United States v. Risk*, 672 F.Supp. 346, 350-58 (S.D. Ind. 1987), the Seventh Circuit subsequently followed *Gimble* in *United States v. Risk*, 843 F.2d 1059 (7th Cir. 1988)).

3

United States v. Varbel, 780 F.2d 758 (9th Cir. 1986).

4

United States v. Denemark, 779 F.2d 1559 (11th Cir. 1986).

structuring currency transactions to avoid inducing financial institutions to file CTRs where the applicable statutes and regulations did not proscribe such acts. The Third Circuit joined those Circuits which have held that such convictions did not pass constitutional muster since the statutes and regulations failed to give fair warning that such conduct was proscribed.

Moreover, the Third Circuit reasoned that whether structuring transactions frustrated the intent of Congress was irrelevant because frustrating the intent of Congress was not a criminal offense. 849 F.2d 805.

CONCLUSION

For the reasons originally stated and the authority cited in this supplemental brief, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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